SUPREME COURT OF THE UNITED STATES.

No. 43.

ALEXANDER McNUTT, GOVERNOR, &c., WHO SUES FOR THE USE OF LEGGITT, SMITH, AND LAWRENCE, PLAINTIFFS IN ERROR,

vs.

RICHARD J. BLAND AND BENJAMIN G. HUMPHREYS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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S. D. Langtree, Print.

Pleas before the Honorable Samuel J. Gholson, District Judge of the United States, at a district court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and thirty-nine.

Be it remembered, that heretofore, to wit, on the 28th day of March, in the year of our Lord one thosand eight hundred and thirty-nine, came Alexander G. McNutt, governor of the State of Mississippi, and successor of Charles Lynch, who sues for the use of Leggitt, Smith, and Lawrence, by Norcom and Mason, his attorneys, into the clerk'soffice of the court aforesaid, and sued out the following writ of summons ad respondendum against Richard J. Bland et al., to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.

The President of the United States to the Marshal of the Southern District of Mississippi, greeting:

We command you, without delay, to summon Richard J. Bland, Benjamin G. Humphreys, and John Grisson, citizens of the State of Mississippi, that they be and appear before the circuit cout of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer Alexander G. McNutt, governor of the State of Mississippi, and the successor of Charles Lynch, who sues for the use of Thomas Leggitt, jr., Samuel Smith, and Smith Lawrence, citizens of the State of New York, and late co-partners under the firm and style of Leggitt, Smith, and Lawrence, of a plea, that they render to him the sum of fifteen thousand dollars, which they owe to and unjustly detain from him, to his damage, fifteen thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default. And have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the [L. S.] Supreme Court of the United States, the 28th day of March, A. D. 1839, and of the Independence of the United States the 63d.

WM. BURNS, *Clerk.*

Marshal's Return.

Executed on R. J. Bland personally, on 5th April, 1839.
W. M. GWIN, *Marshal*,
Per JOHN HUNTER, *Dep.*

And on the same day of suing out the writ aforesaid, the plaintiff, by his attorney aforesaid, filed his declaration herein, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, Ninth Judicial Circuit,
United States Circuit Court, May Term, 1839.

Richard J. Bland, Benjamin G. Humphreys, and John Grisson, citizens of the State of Mississippi, were summoned to answer Alexander G. McNutt, governor of the State of Mississippi, and the successor of Charles Lynch, who sues for the use of Thomas Leggitt, jr., Samuel Smith, and Smith Lawrence, citizens of the State of New York, and late co-partners in trade under the name and style of Leggett, Smith, and Lawrence, of a plea that they render to him the sum of fifteen thousand dollars, which they owe to and unjustly detain from him. For that whereas the said defendants, by the names of Richard J. Bland, Benjamin G. Humphries, and John Grisson, heretofore, to wit, on the 10th day of November, in the year 1837, by their writing obligatory, sealed with their seals, and now here shown to the court, bearing date the day and year aforesaid, acknowledged themselves to be held and firmly bound unto Charles Lynch, governor of the State of Mississippi, and his successors in office, in the sum of fifteen thousand dollars above demanded, to be paid to said plaintiff, or his successors in office; which bond contains the following conditions, to wit:

The conditions of this obligation are such, that whereas the above bound Richard J. Bland was duly elected, by the qualified electors of the county of Claiborne, sheriff of said county, at an election held therein, on the sixth and seventh days of November, A. D. 1837, for the term of two years, as prescribed in the constitution. Now, therefore, if the said Richard J. Bland, shall well and truly collect all fines, forfeitures, and amercements accruing to or being due to the State, or any county within the same, which may lawfully come into his hands for collection, against any person residing in or being found within the county for which he is sheriff, and shall punctually pay all such fines, forfeitures, and amercements, so collected, to the person or persons entitled by law to receive the same, and shall well and truly execute, and due return make of all process and precepts to him lawfully directed, and pay and satisfy all sums of money by him received, by virtue of any such process or precepts, to the person or persons to whom the same are due, his, her, or their lawful attorneys, executors, administrators, or assigns, and in all things shall truly and faithfully execute and perform the duties of the said office of sheriff, during the time of his continuance therein, then this obligation to be void, otherwise to remain in full force and virtue.

And the said plaintiffs aver that the said above bound Richard J. Bland, sheriff as aforesaid, hath not well and truly kept and per-

formed the conditions of the above bond, and hath not truly and faithfully executed and performed the said office of sheriff. In this, that the said plaintiff avers that the said Leggett, Smith, and Lawrence, by their attorney, prosecuted their certain suit in the United States circuit court for the district of Mississippi, held at the town of Jackson, and State of Mississippi, at the May term of said court, for the year 1837, against George W. McNider, when, by the judgment and consideration of said court, the said Leggett, Smith, and Lawrence, recovered of said defendant, on the 17th day of November, in the year 1837, the sum of thirty-nine hundred and ten dollars 78 cents, for their damages and the costs of suit in their behalf expended; and that on the 30th day of December, in the year 1837, a writ of capias ad satisfaciendum was sued out by said Leggett, Smith, and Lawrence, of said court, against the body of said George W. McNider, directed to the marshal of the State of Mississippi, and which writ was placed in the hands of the said marshal of the State of Mississippi for execution, and the marshal of the State aforesaid did, whilst the said writ was in full force and virtue, by virtue of said writ delivered to him, take into his custody the body of the said George W. McNider, and did, after the said taking, turn over and deliver the same, at the said county of Claiborne for safe keeping, to Richard J. Bland, the defendant, one of the obligors in said bond who was then and there the acting sheriff in and for the county of Claiborne and State of Mississippi, and the plaintiffs allege that said Richard J. Bland, then and there, whilst said writ was in full force and virtue, did, in violation of his duty as sheriff, discharge, release, and set at liberty said prisoner, to wit, the said George W. McNider, not by force or operation of law, or pursuance of any power or process emanating therefrom, but in violation thereof, and without the license or consent of said plaintiffs, Leggett, Smith, and Lawrence, or of their lawful agent or attorneys, and against their will, they the said plaintiffs being wholly unsatisfied and unpaid, and said judgment aforesaid being then and there in full force and effect, and not in any respect reversed or annulled, paid off or discharged, and whereby an action has accrued to said plaintiffs to demand the sum of fifteen thousand dollars from said defendants.

Yet said defendants, though often requested, have not as yet paid said sum of money above demanded, or any part thereof, to said plaintiffs, but to do so have wholly failed and refused, and still refuse so to do, to the damage of said plaintiffs fifteen thousand dollars. And therefore they sue.

NORCOM AND MASON.
Plaintiffs' Attorneys.

Copy of Bond sued on.

Know all men by these presents, that we, Richard J. Bland, Benjamin G. Humphreys, and John Grissom, of the county of Claiborne, and State of Mississippi, are held and firmly bound by these

presents, unto Charles Lynch, governor of the State of Mississippi, and unto his successors in office, for the time being, in the sum of fifteen thousand dollars, lawful money of the United States, to be paid to the said Charles Lynch, governor of the State of Mississippi, and to his successors in office; and for the faithful payment thereof, well and truly to be made, we and each of us bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this tenth day of Novembnr, A. D. 1837.

The condition of the above obligation is such, that whereas the above bound Richard J. Bland was duly elected, by the qualified electors of the county of Claiborne, sheriff of said county, at an election held therein on the sixth and seventh days of November, A. D. 1837, for the term of two years, as prescribed in the constitution. Now, therefore, if the said Richard J. Bland shall well and truly collect all fines, forfeitures, and amercements accruing to or being due to the State or any county within the same, which may lawfully come into his hands for collection, against any person or persons residing or being found within the county of which he is sheriff, and shall punctually pay all such fines, forfeitures, amercements so collected, to the person or persons entitled by law to receive the same, and shall also well and truly execute and due return make of all process and precepts to him lawfully directed, and pay and satisfy all sums of money by him received, by virtue of such process or precepts, to the person or persons to whom the same are due, his, her, or their lawful attorney, executors, administrators, or assigns, and in all things shall truly and faithfully execute and perform the duties of the said office of sheriff, during the time of his continuance therein, then this obligation to be void, otherwise to be and remain in full force and virtue.

RICHARD J. BLAND, [L. S.]
BENJ. G. HUMPHREYS, [L. S.]
JOHN GRISSOM, [L. S.]

THE STATE OF MISSISSIPPI, *Claiborne County, ss.*

I, Nicholas McDougall, Esquire, judge of probate in and for said county, do hereby approve of the within and foregoing bond and securities thereto. Given under my hand and seal, this 15th day of November, A. D. 1837.

N. McDOUGALL, [L. S.]
Judge of Probate.

THE STATE OF MISSISSIPPI, *Claiborne County, ss.*

I, Richard J. Bland, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Mississippi so long as I remain a citizen thereof, and will, in all respects, execute and perform the duties of the office of sheriff

of Claiborne county, to the best of my skill and abilities. So help me God.

R. J. BLAND.

Sworn to and subscribed before me, this 15th day of November, A. D. 1837.

N. McDOUGALL,
Judge of Probate.

THE STATE OF MISSISSIPPI, *Claiborne County, ss.*

I, John Witherall, clerk of the probate court in and for said county, do hereby certify that the foregoing transcript contains a true copy of the bond given by R. J. Bland, Esquire, sheriff of the said county of Claiborne, as the same appears of record in my office.

Given under my hand and seal of office, this, the 8th day
[L. S.] of February, A. D. 1839.

JOHN WITHERAL, *Clerk*,
by J. L. WESTON, *Deputy Clerk.*

And afterwards, to wit, on the 20th day of June, in the year of our Lord 1839, a writ of alias summons was issued from the clerk's office of the court aforesaid, which with the endorsement and return thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.

The President of the United States to the Marshal of the Southern District of Mississippi, greeting:

We command you, as before we commanded you, without delay, to summon Richard J. Bland, Benjamin G. Humphreys, and John Grisso*m*, citizens of the State of Mississippi, that they be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of November next, to answer to Alexander G. McNutt, governor of the State of Mississippi, and the successor of Charles Lynch, who sues for the use of Thomas Leggett, Junior, Samuel Smith, and Smith Lawrence, citizens of the State of New York, and late co-partners under the firm and style of Leggett, Smith and Lawrence, of a plea that they render to him the sum of fifteen thousand dollars, which they owe to and unjustly detain from him, to his damage, fifteen thousand dollars; and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default. And have then there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the
[L. S.] Supreme Court of the United States, the 20th day of June, A. D. 1839, and of the Independence of the United States the 63d.

WM. BURNS, *Clerk.*

To be executed on Humphreys and Grisson only.

Marshal's Return.

Executed this writ on B. G. Humphreys personally, on the 14th day of October, 1839. J. Grisson not found in my district.

WM. M. GWIN, *Marshal*,
per JNO. HUNTER, *D. M.*

And the said defendants, Richard J. Bland and Benjamin G. Humphreys come and defend the wrong when and where, and for plea say, plaintiffs their action aforesaid ought not to have and maintain, &c., because they say, that by an act of the Legislature of the State of Mississippi, passed June 22, 1822, entitled an act to reduce into one the several acts concerning executions and for the relief of insolvent debtors, it is among other things provided, that where an insolvent person shall not be able to satisfy or pay his ordinary prison fees, if the creditor upon notice given to him or her, his or her attorney or agent, shall refuse to give security to the sheriff or jailor for the payment of such prison fees, or shall fail to pay the same when demanded, the sheriff or jailor shall discharge such debtor out of prison; and it is further provided by said act, that, whereas it is unreasonable sheriffs should be obliged to go out of their counties to give notice to creditors at whose suit any person may be in the custody of such sheriff.

That where any execution shall be delivered to the sheriff of any other county than that where any creditor resides, such creditor shall name some person in the county where the execution is to be levied, to be his, her, or their agent for the particular purpose for giving to and receiving from the sheriff any notices which may be necessary relating thereto, and if any creditor shall fail to appoint such agent, the sheriff shall not be obliged to give notice previous to the discharge of such prisoner for want of security for his prison fees, but such prisoner shall be discharged without any notice to be given to the creditor so failing.

And these defendants aver that at the time the said George W. McNider was committed to the custody of the said sheriff of Claiborne county, as in plaintiff's declaration is stated, and ever since, until said prisoner was discharged, the said Leggett, Smith and Lawrence were not residents of the said county of Claiborne, nor did they appoint any agent or attorney to receive notice as aforesaid within said county, and the said George W. McNider was then and there, to wit, at Claiborne, at the time of his said commitment, insolvent and unable to satisfy or pay his ordinary prison fees, and the said Leggett, Smith and Lawrence then and there wholly failed and refused to give security to the said sheriff of Claiborne county aforesaid, or to the jailor thereof, for the payment of the said prison fees, and therefore the said sheriff defendant as aforesaid, lawfully discharged the said George W. McNider out of prison as aforesaid; all of which these defendants are ready to verify. Wherefore, they pray judgment, &c., whether, &c.

CHAPLAIN, WINCHESTER AND BLACK,
Attys. for Defendants.

And for further plea defendants say, *actio non*, because they say that the said George W. McNider, after his said commitment to the custody of the said sheriff of Claiborne county, to wit, on at was regularly and according to the provisions of the acts of the Legislature of the State of Mississippi for the relief of insolvent debtors, brought before Nicholas McDougall, a judge of probate, duly commissioned in and for the said county of Claiborne, and then and there having complied with all the requisitions of the said acts, was by the order of the said judge of probate, and by warrant from the said judge of probate, then and there lawfully discharged from the said custody of the said sheriff, as appears by the record thereof, now here in court produced; all of which these defendants are ready to verify. Wherefore, they pray judgment, whether, &c.

CHAPLAIN, WINCHESTER AND BLACK,
Attys. for Defendants.

And said plaintiffs for replication to the plea by said defendants first above pleaded say, that at the time of the discharge of the prisoner (Geo. W. McNider) these plaintiffs had an agent residing within the district of Mississippi, to wit, in the county of Warren, the State aforesaid, their attorney of record, and known to said McNider, and that no application was made whatever to these plaintiffs or their agent, for the payment of jail fees, or to give security for the same, nor was any notice whatever given either to these plaintiffs or their agent, or attorney, of an intention to discharge or of an application of said prisoner to be discharged, either for that cause or any other, from the custody and safe keeping of said defendant Bland; and this they are ready to verify &c. Wherefore, they pray judgment, &c.

NORCOM AND MASON,
Plaintiff's Attys.

And said plaintiffs for replication to the plea secondly above pleaded by said defendants, say, that the prisoner aforesaid, George W. McNider, was by virtue of process legally issuing from the circuit court of the United States for the district of Mississippi, taken into custody by the marshal of said district, and by him was delivered to the said defendant Bland, for safe keeping, who was then acting as sheriff, and was sheriff of the county in which said prisoner was taken. And said plaintiffs say said McNider was not discharged from custody aforesaid, by virtue of any process emenating from any court of the United States, or judge thereof, nor by virtue of any law of the United States, but these plaintiffs say that said prisoner was discharged contrary to the provisions of the several acts of Congress made and provided, prescribing the mode and manner of discharging prisoners confined under process from the courts of the United States. And said plaintiffs say that neither

they nor their agent and attorney of record, residing within the district of Mississippi, were served with notice of such discharge, or intended application by the prisoner to be discharged from custody.

And therefore they say said G. W. McNider was not duly and legally discharged from confinement as aforesaid. And this they are ready to verify; wherefore they pray judgment, &c.

NORCOM AND MASON,
Plaintiffs' Attorneys.

And the said Bland and Humphreys by their attorneys, Chaplain and Winchester and Black, come and defend, &c., and for replication to the plaintiffs replication to defendants first plea, say: That plaintiffs their action &c., ought not to have and maintain, &c., because they say, the matters and things in said replication contained, are not good and sufficient in law, in manner, and form, as in said replication set forth, to entitle the plaintiffs to maintain their said action against them, and this they are ready to verify. Wherefore, they pray judgment, &c., and for special answer of demurrer, they set down the following:

1st. Said replication neither admits nor denies the plea of defendants first above pleaded.

2d. Said replication is single.

3d. Said replication does not aver any matter good as an answer to defendants said first plea.

CHAPLAIN, WINCHESTER AND BLACK,
Defendants Attorneys.

And the said defendants for rejoinder to plaintiffs replication to the second plea of defendants above pleaded, say: *Actio mon*, because they say, the matters and things in said replication contained in manner and form as therein set forth, are not good and sufficient in law to entitle plaintiffs to maintain their said action, &c., and this they are ready to verify. Wherefore, they pray judgment, &c.; and for special causes of demurrer to said second replication, defendants set down the following:

1st. Said replication contains no answer to defendants second plea.

2d. Said replication is argumentative.

3d. Said replication is informal, imperfect, and otherwise insufficient.

CHAPLAIN, WINCHESTER AND BLACK,
Defendants Attorneys.

And the said plaintiff by his attorney, comes and defends and says: That the plaintiffs replication to said defendants first plea, and the matters and things therein contained in manner and form as the same are set forth and pleaded and set forth, are sufficient in law for him the said plaintiff to have and maintain his said action

against him the said defendant. And this he is ready to verify, as the court shall here direct and award. Wherefore, as the said defendants have not answered the said replication, nor in any manner denied the same, the said plaintiffs pray judgment, and his debt and damages assessed, &c.

NORCOM AND MASON,
Plaintiffs Attorneys.

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and thirty-nine, came the parties aforesaid by their respective attorneys, and on motion of the said plaintiff by his attorney, it is ordered, that this cause be discontinued as to the defendant John Grissom. And thereupon, the matters of law arising upon the demurrer of the defendants to the plaintiffs replication to the first plea, and also the plaintiffs demurrer to the second plea of the said defendants being fully argued, it is ordered, that said demurrers be sustained.

Therefore, it is considered by the court, that the plaintiff take nothing by his bill, and that the defendants go thereof without day, and recover against the said Leggit, Smith, and Lawrence, their costs by them, about their defence in this behalf expended.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.
Circuit Court of the United States.

I, William Burns, clerk of the said circuit court, do hereby certify, that the foregoing ten pages contain a full, true, and complete transcript of the record and proceedings in a certain action of debt lately decided in our said court, between the parties therein named, as fully and completely as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed the seal of said court, this twenty-seventh day of December, A. D. 1839.

WM. BURNS, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the Southern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Alexander G. McNutt, governor, &c., who sues for the use of Leggitt, Smith and Lawrence, plain-